

ALJ/JPO/avs

Decision 02-03-021 March 6, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Emergency Joint Application of Winstar Wireless, Inc. (U-5531-C) and Winstar Communications, LLC for Expedited Ex Parte Approval of the Assignment of Assets and Authorization to Provide Telecommunications Service.

Application 02-01-028  
(Filed January 23, 2002)

**O P I N I O N**

**Summary**

This decision grants the joint application of Winstar Wireless, Inc. (Old Winstar) and Winstar Communications, LLC (New Winstar) for approval for New Winstar to acquire the assets and the certificates of public convenience and necessity (CPCNs) of Old Winstar.

**Parties to the Transaction**

Old Winstar is a Delaware corporation authorized to do business in California. Its principal place of business is 2350 Corporate Park Drive, Herndon, Virginia 20171. By Decision (D.) 95-11-045 and D.95-12-057, Old Winstar was granted CPCNs to operate in California as a resale provider of interexchange services (U-5531-C), and as a facilities-based and resale provider of local exchange service (U-5556-C), respectively. Old Winstar is a wholly owned subsidiary of WCI Capital Corporation which, in turn, is a wholly owned subsidiary of Winstar Communications, Inc. (WCI)

New Winstar is a Delaware limited liability company. Its principal place of business is located at 520 Broad Street, Newark, New Jersey 07102-3111.

New Winstar is a direct subsidiary of Winstar Holdings, LLC (WHL) which is 95 percent owned by IDT Advanced Communication Services, LLC.<sup>1</sup> IDT Advanced Communication Services, LLC is wholly owned by IDT Corporation.

### **Proposed Transaction**

Old Winstar and certain of its affiliates filed for bankruptcy on April 18, 2001 under Chapter 11 of the United States Code. The Bankruptcy Court has approved a transaction whereby WHL is acquiring the Assets of WCI and its subsidiaries, including Old Winstar. As a result, Old Winstar's assets and CPCNs will be acquired by New Winstar, a wholly owned subsidiary of WHL.

The applicants represent that the transaction will be transparent to customers. Customers will continue to receive service under the same rates, terms and conditions, subject to any subsequent changes New Winstar may make, in accordance with the Commission's requirements, after the transfer is approved. The applicants say that, absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy. If the proposed acquisition is approved, customers' service will continue without interruption. In addition, customers will receive notification of the transfer as required by the Commission for such transfers.

### **Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of

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<sup>1</sup> The other five percent is owned by the Old Winstar bankruptcy estate.

the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company which does not possess a CPCN desires to acquire control of a company which does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Old Winstar possesses a CPCN to operate as a facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to New Winstar.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

New Winstar provided a guarantee by IDT Corporation that demonstrates that it has sufficient resources to meet our financial requirements. It also provided information on its management that demonstrates that it has sufficient knowledge and experience to satisfy our requirements.

Absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy. If the proposed acquisition is approved,

customers' service will continue without interruption.<sup>2</sup> Therefore, the proposed transaction is not adverse the public interest.

As discussed above, the applicant has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

### **Procedural Matters**

In Resolution ALJ 176-3081, dated February 7, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. By D.95-11-045 and D.95-12-057, Old Winstar was granted CPCNs to operate in California as a resale provider of interexchange services (U-5531-C), and as a facilities-based and resale provider of local exchange service (U-5556-C), respectively.

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<sup>2</sup> By letters dated February 22, 2002, and March 5, 2002, the applicants indicated that service to 323 customers will not be provided by New Winstar after April 17, 2002 because it has chosen, for economic reasons, not to provide service to these customers. Old Winstar indicated that it would make every effort to avoid disruption of service to these customers. We remind the applicants that Commission approval is required for withdrawal of service to customers.

2. Old Winstar and certain of its affiliates filed for bankruptcy on April 18, 2001 under Chapter 11 of the United States Code.
3. The Bankruptcy Court has approved a transaction whereby WHL is acquiring the Assets of WCI and its subsidiaries, including Old Winstar.
4. As a result of the proposed transaction, Old Winstar's assets and CPCNs will be acquired by New Winstar, a wholly owned subsidiary of WHL.
5. Absent the proposed acquisition, customers' service would likely be interrupted because of the bankruptcy.
6. New Winstar has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.
7. New Winstar possesses the necessary technical expertise required by the Commission.
8. Notice of this application appeared on the Commission's Daily Calendar on January 25, 2002.
9. There were no protests to this application.
10. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.
2. New Winstar meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services.

3. The acquisition of Old Winstar by New Winstar is not adverse to the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854, the joint application of Winstar Wireless, Inc. (Old Winstar) and Winstar Communications, LLC (New Winstar), requesting approval of the acquisition of the assets and Certificates of Public Convenience and Necessity of Old Winstar by New Winstar is approved.

2. This application is closed.

This order is effective today.

Dated March 6, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners